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### Double Jeopardy

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Stanley v. Justices of the Supreme Court<sup>57</sup>  
(decided April 24, 1995)

Defendant argued that he was entitled to protection against double jeopardy under both the Federal<sup>58</sup> and New York State Constitutions.<sup>59</sup> He contended that there was no “manifest necessity” for the grant of a mistrial by the trial court.<sup>60</sup> The Appellate Division, Second Department, rejected the defendant’s contention and held that a grant of a mistrial rests in the sound discretion of the trial court.<sup>61</sup> The court explained that the unavailability of a critical prosecution eyewitness was a proper reason for the trial court’s exercise of discretion to grant a mistrial.<sup>62</sup>

In *People v. Ferguson*,<sup>63</sup> the New York Court of Appeals discussed the principles involved in double jeopardy protection. The court stated that the Double Jeopardy Clauses in both the New York State and Federal Constitutions “protect an accused against multiple prosecutions for the same offense.”<sup>64</sup> Although it is within the trial court’s discretion to grant a mistrial without

57. 625 N.Y.S.2d 622 (App. Div. 2d Dep’t 1995).

58. U.S. CONST. amend. V. The Fifth Amendment provides in pertinent part: “[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb.” *Id.*

59. N.Y. CONST. art. I, § 6. This section provides in pertinent part: “No person shall be subject to be twice put in jeopardy for the same offense . . . .” *Id.*

60. *Stanley*, 625 N.Y.S.2d at 622.

61. *Id.*

62. *Id.*

63. 67 N.Y.2d 383, 494 N.E.2d 77, 502 N.Y.S.2d 972 (1986). In *Ferguson*, a juror had been injured in a car accident and notified the court of the accident and his hospitalization. *Id.* at 386, 494 N.E.2d at 79, 502 N.Y.S.2d at 974. Since there were no alternate jurors, the judge called a mistrial even though the court had not inquired into the seriousness of the juror’s injuries or the expected length of the proposed hospital stay. *Id.* The defense counsel remained silent. *Id.* at 387, 494 N.E.2d at 79, 502 N.Y.S.2d at 974. Prior to the second trial, defense counsel moved to dismiss the indictment on double jeopardy grounds. *Id.* The motion was denied because the attorney had not objected to the mistrial. *Id.* The defendant was convicted and the conviction was upheld on appeal. *Id.*

64. *Id.* at 387, 494 N.E.2d at 80, 502 N.Y.S.2d at 975 (citations omitted).

the consent of the defendant, there must be no manifest necessity in order for the defendant to be entitled to the protection of double jeopardy.<sup>65</sup> The court stated that “[a]lthough the trial court’s view as to the necessity for discharging the jury is entitled to deference, its discretion is not unlimited.”<sup>66</sup>

Further, in *Hall v. Potoker*,<sup>67</sup> the court concluded that there is no abuse of discretion by the trial court when available alternatives are explored and the decision is based upon valid considerations.<sup>68</sup> The court explained that “when the Trial Judge has properly explored the appropriate alternatives, and there is a sufficient basis in the record for a mistrial, an appellate court will be hesitant to interfere with the exercise of this discretion.”<sup>69</sup> The court noted that “where the mistrial is premised upon a claimed unavailability of crucial prosecution evidence, the validity of that claim is subjected to ‘the strictest scrutiny.’”<sup>70</sup>

Moreover, in *People v. Michael*,<sup>71</sup> the court demonstrated a clear case of abuse of discretion. In *Michael*, the court declared that when a mistrial is granted because “a delay in the trial would inconvenience the court and the jury, and without any inquiry into the effect of such a delay on the jury’s ability to render a fair verdict, discretion falters and abuse appears.”<sup>72</sup> The court stated that “[a] defendant’s right to have his fate determined as expeditiously as possible and by the first jury to which the case is presented is a basic one, and may not be set aside without strong reason.”<sup>73</sup> The court reasoned that “[w]eighed in the balance of judicial obligations, a necessary change in travel plans is of little

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65. *Id.* at 388, 494 N.E.2d at 80, 502 N.Y.S.2d at 975.

66. *Id.* (citations omitted).

67. 49 N.Y.2d 501, 403 N.E.2d 1210, 427 N.Y.S.2d 211 (1980).

68. *Id.* at 507, 403 N.E.2d at 1214, 427 N.Y.S.2d at 215.

69. *Id.* at 505, 403 N.E.2d at 1213, 427 N.Y.S.2d at 214 (citation omitted).

70. *Id.* at 506, 403 N.E.2d at 1213, 427 N.Y.S.2d at 214 (citations omitted).

71. 48 N.Y.2d 1, 394 N.E.2d 1134, 420 N.Y.S.2d 371 (1979).

72. *Id.* at 11, 394 N.E.2d at 1139, 420 N.Y.S.2d at 376.

73. *Id.* at 10, 394 N.E.2d at 1138, 420 N.Y.S.2d at 375.

significance.”<sup>74</sup> Accordingly, a trial court cannot declare a mistrial simply because a delay would be inconvenient.

The *Stanley* court referred to double jeopardy protection under both the Federal and New York State Constitutions.<sup>75</sup> Both prohibit retrial for the same crime unless there is manifest necessity for the mistrial.<sup>76</sup> New York has codified some of these principles in Criminal Procedure Law section 280.10(3).<sup>77</sup> Under section 280.10(3) the trial judge must declare a mistrial under certain circumstances.<sup>78</sup>

## CRIMINAL COURT

### NEW YORK CITY

People v. Frank<sup>79</sup>  
(decided September 11, 1995)

The defendant moved for a dismissal claiming that the temporary suspension of his driver’s license, due to his alleged refusal to submit to a chemical test, constituted double jeopardy in violation of both the New York State<sup>80</sup> and Federal

74. *Id.*

75. *Stanley v. Justices of the Supreme Court*, 625 N.Y.S.2d 622, 622 (App. Div. 2d Dep’t 1995).

76. *Michael*, 48 N.Y.2d at 9, 394 N.E.2d at 1138, 420 N.Y.S.2d at 375.

77. N.Y. CRIM. PROC. LAW § 280.10(3) (McKinney 1993).

78. N.Y. CRIM. PROC. LAW § 280.10(3). Section 280.10(3) provides in pertinent part:

At any time during the trial, the court must declare a mistrial and order a new trial of the indictment under the following circumstances:

. . . .

3. Upon motion of either party or upon the court’s own motion, when it is physically impossible to proceed with the trial in conformity with law.

*Id.*

79. 631 N.Y.S.2d 1014 (Crim. Ct. New York County 1995).

80. N.Y. CONST. art. I, § 6. This provision provides in pertinent part: “No person shall be subject to be twice put in jeopardy for the same offense . . . .” *Id.*